

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division

In re: ) Chapter 11  
CIRCUIT CITY STORES, INC., et al., )  
Debtors. ) Case No. **08-35653**  
 ) Jointly Administered  
 )  
Ashley Isaac, *Pro Se*, ON BEHALF OF HERSELF )  
Movant, )  
v. )  
CIRCUIT CITY STORES, INC., )  
Debtor. )

**MOTION TO ALLOW THE**

**PROOF OF CLAIM OF ASHLEY ISAAC AS TIMLEY FILED**

**Comes Now** the Movant, **Ashley Isaac** in the above style and respectfully  
files this Motion To Allow The Existing Proof Of Claim Of Ashley Isaac.

**JURISDICTION AND VENUE**

1. This Court has original jurisdiction to consider this Motion under 28  
U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. §157(b).  
Venue in these cases and this Motion in this district is proper under 28  
U.S.C. §§ 1408 and 1409.

2. The requests for the relief requested herein are sections 503(b)(9),  
503(a), 507(a)(2) and 105(a) of title 11 of the United States Code.

**FACTUAL BACKGROUND**

3. Circuit City Stores, Inc., et al. filed voluntary petitions for relief in Chapter 11 of the Bankruptcy Code on November 10, 2008.

4. On or about January 16, 2009 the Debtor began liquidation of its remaining stores on January 16, 2009.

5. The deadline for filing a proof of claim (for non-governmental claimants) was January 30, 2009.

6. Ashley Isaac was an employee with Circuit City Stores, Inc. until January or February 2009. Ms. Isaac filed a complaint against a Technology Supervisor for harassment. When the harassment continued she filed a complaint with the EEOC. Despite her request for a transfer from the "Hoover store" (0827) the harassment did not stop until the Movants employment ended. During her employment with the Debtor Ms. Isaac made several requests to store Management for the paid time off "P.T.O" she had accumulated. All request made by Ms. Isaac for paid time off were ignored and denied. According to a "pay stub" dated 06/12/2008 Ms. Isaac lost at least 10.79 paid time off hours attached as Exhibit A. Because of Ms. Isaac's lost paid-time-off she is in fact a claimant, and if her motion is not granted she will suffer a great prejudice (as a claim of unpaid wages).

7. In March of 2009 Ms. Isaac received a "Right To Sue Letter" from the E.E.O.C. and in May of 2009 Ms. Isaac filed a lawsuit, in the United

States District Court For The Northern District Of Alabama Southern Division, against the "Debtor" and three of their employees. On July 17, 2009 the Honorable Judge William Acker **dismissed without prejudice** the action against Circuit City Stores, Inc. to be pursued in bankruptcy court.

8. On or around July 24<sup>th</sup>, 2009 Ms. Isaac mailed a proof of claim to Kurtzman Carson LLC in the amount of \$850,000. In August 2009 Ms. Isaac filed and amended a Motion For Relief from the Automatic Stay. On August 27, 2009 the Honorable Judge Kevin Huennekens **dismissed without prejudice** the Motion For Relief From The Automatic Stay filed by Ms. Isaac because her proof of claim was filed seven months after the deadline for filing a proof of claim had passed.

### **ALLOWANCE OF A LATE PROOF OF CLAIM**

#### **IS WARRANTED IF AN EXCUSABLE NEGLECT EXISTS**

9. In pursuant to Rule 9009(b)(1) that governs time extensions states: *Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given there under or by order of court, the court for cause shown may at anytime in its discretion (1) with or without motion or notice order the period enlarged if the request therefore is made before the expiration of the period originally prescribed or as extended by a previous*

*order or (2) on motion made after the expiration of the specified period to permit the act to be done where the failure to act was the result of excusable neglect.* Although she had filed a charge with the Equal Employment Opportunity Commission, Ms. Isaac despite her numerous attempts had never met the investigator of her charge neither communicated with her prior to the deadline for filing proofs of claim. When Ms. Isaac finally did meet the EEOC investigator in March 2009 the bar date deadline had already passed. In the "Objections and Responses" to the Movants Relief of Stay attached as Exhibit B, the Debtor claims "On December 17 and 19, 2008, KCC on the Movant because of her status served a copy of the Claims Bar Date Notice as an employee, all parties who filed notices of appearance pursuant to Bankruptcy Rule 2002, all of the Debtors' scheduled creditors in these cases, the Debtors' equity holders, and certain other parties (Docket No. 1314). In addition, the Debtors published the Claims Bar Date Notice in The Wall Street Journal (Docket No. 1395) and The Richmond Times-Dispatch (Docket No. 1394)." Assuming that the Debtor did serve a copy of the Claims Bar Date Notice on her employee address they did not serve Ms. Isaac, but they served her parents address. During late 2008 Ms. Isaac's sister had complications with her pregnancy, because her brother-in-law suffers from Epilepsy, Ms. Isaac was left to care for her sister until late

January 2009. Because Ms. Isaac's sister and brother-in-law had their own residence she was caring for her sister away from her parents residence. Ms. Isaac has never subscribed to either the Richmond Times-Dispatch or the Wall Street Journal, therefore she was not served under Rule 9008. The Movant currently resides on her parents property in Birmingham, Alabama. Ms. Isaac's late filing was a result of excusable neglect because the events leading to her untimely filing were beyond her control. Ms. Isaac firmly assures the Court that if her motion is granted she will only seek any available insurance, and will not cause an undue burden to the Debtors estate.

10. In a case heard before the United States Court Of Appeals For The Fifth Circuit In re Eagle BUS MFG, Inc., et al., Debtors. Greyhound Lines Inc., Appellant, V. Donna Rogers, et al., Appellees. the Judge presiding over that Bankruptcy ruled that denying the Movants proof of claim would deny them *due process*. Because one of the claimants never received the Bar Date Notice/ Deadline, but instead it was sent to her brothers home address, she was not properly served and the Debtor violated her right to due process.

11. On September 18, 2009 the " Motion To Allow" by Ashley Isaac was received by the Clerks Office of the United States Bankruptcy Court Eastern

District of Virginia Richmond Division. Ms. Isaac also asked, in her motion, *to be heard on the matter September 22, 2009 at 11:00 ET. Because of an error in the Clerks Office her motion was not placed on the docket until after the hearing had taken place. Because Ms. Isaac's Motion was not placed on the docket and timely filed, the Honorable Judge Hunnekens adjourned the motion until November 23, 2009. Although the "Motion To Allow" (docket #5008) was adjourned it was never placed on the docket for November 23, 2009. Because the motion was never placed on the docket Ms. Isaac respectfully asks this Court to accept this motion and **dismiss without prejudice** the previously filed Motion To Allow (docket number 5008).*


### **CONCLUSION**

Wherefore, premises considered, the plaintiff respectfully asks that this Court:

- (a) grant this Motion, allow the late filing of the proof of claim in question.
- (b) grant the Movant lost wages.
- (c) dismiss without prejudice the previously filed "Motion To Allow."

Respectfully Submitted,

November 11 2009

  
Ashley Isaac

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division

In re:

Circuit City Stores, Inc., et al

Debtor

)  
)  
) Case No. 08-35653  
) Chapter 11

**NOTICE OF MOTION (OR OBJECTION)**

Ashley Isaac has filed papers with the court to Motion To Allow The Proof Of Claim Of Ashley Isaac As Timely Filed.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you do not want the court to grant the relief sought in the motion (or objection), or if you want the court to consider your views on the motion (or objection), then on or before \_\_\_\_\_, you or your attorney must:

- ☐ File with the court, at the address shown below, a written request for a hearing [or a written response pursuant to Local Bankruptcy Rule 9013-1(H)]. If you mail your request for hearing (or response) to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

Clerk of Court  
United States Bankruptcy Court  
701 East Broad Street  
Richmond, VA 23219

You must also mail a copy to:

McGuire Woods LLP  
One James Center  
901 E. Cary Street  
Richmond, Virginia 23219

- ☐ Attend a hearing to be scheduled at a later date. You will receive separate notice of hearing. **If no timely response has been filed opposing the relief requested, the court may grant the relief without holding a hearing**

- ☐ Attend the hearing on the motion (or objection) scheduled to be held on November 23, 2009 at 11:00 a.m. at United States Bankruptcy Court, 101 East Broad Street, Richmond, VA.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: November 17, 2009

Signature, name, address and telephone number of person giving notice:

Ashley Isaac  
617 S. 76th Street  
Birmingham, AL 35206  
Ashley Isaac  
Virginia State Bar No. \_\_\_\_\_  
Counsel for \_\_\_\_\_

Certificate of Service

I hereby certify that I have this 17 day of November, 20 09, mailed or hand-delivered a true copy of the foregoing Notice of Motion (or Objection) to the parties listed on the attached service list.

Ashley Isaac



# **EXHIBIT A**

CIRCUIT CITY PAYROLL  
PO BOX 563986  
CHARLOTTE, NC 28256-3986  
1-800-288-6353

Pay Group: MIF EC Hourly  
Business Unit: USMA  
Employee ID: 10397618  
Department: 082100 Hoover SS  
Location: AL Hoover

Pay Begin Date: 06/01/2008  
Pay End Date: 06/01/2008  
Advice Date: 06/12/2008

TAX DATA: Federal  
Marital Status: Single  
Allowances: 0  
Addl. Pct: 0  
Addl. Amt:

HOURS AND EARNINGS

Description	Current Rate	Current Hours	Current Earnings	YTD Hours	YTD Earnings	Description	Current	YTD
Regular Hourly	7.350000	66.00	485.10	776.75	5,504.02	Fed Withholding	42.37	476.61
Prize Award	0.00		0.00	41.25	7.03	Fed MED/EE	7.03	80.61
PTO Hourly Adjustment	0.00		0.00	1.83	12.81	Fed OASDI/EE	30.08	344.77
PVP Hours Adjustment	0.00		0.00	1.83	12.81	AL Withholding	12.85	141.23
Average Overtime			0.00	4.25	14.88	AL JEFFERSON CO Withholding	2.43	27.66

TAXES

Description	Current	YTD
Fed Withholding	42.37	476.61
Fed MED/EE	7.03	80.61
Fed OASDI/EE	30.08	344.77
AL Withholding	12.85	141.23
AL JEFFERSON CO Withholding	2.43	27.66

Total:	66.00	485.10	776.75	5,518.90	Total:	95.20	1,076.93
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Description	Current	YTD	Description	Current	YTD
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PTO P.A.M.			Current PTO	8.76	
			Earnings	64.00	
			Taken	0.00	
			Balance	2.61	
			Current PTO	8.76	
			Earnings	64.00	
			Taken	0.00	
			Balance	10.79	

IMPUTED INCOME			Current	0.00	
			YTD	0.00	

TOTAL GROSS	485.10	485.10	TOTAL TAXES	95.20	95.20
YTD:	5,518.90	5,560.15	TOTAL DEDUCTIONS	0.00	0.00
			NET PAY	389.90	4,447.93

MESSAGE: VERIFY YOUR PERSONAL INFO FOR 2007 W2 ACCURACY

▼ FOLD AND TEAR HERE ▼

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER. THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE WHEN CHECKING THE ENDOSEMENTS.



CIRCUIT CITY PAYROLL  
PO BOX 563986  
CHARLOTTE, NC 28256-3986  
1-800-288-6353

Date: 06/12/2008

Advice No. 2884742

Deposit Amount: \$\*\*\*\*\*389.90

To The ASHLEY ISAAC  
Account(s) of 617 South 76th Street  
Birmingham, AL 35206-0000

NON NEGOTIABLE

DIRECT DEPOSIT DISTRIBUTION		
Account Type	Account Number	Deposit Amount
Checking	XXXXXXXXXXXXXXXXXXXX8604	\$389.90
NON-NEGOTIABLE		TOTAL THIS IS NOT A CHECK *****389.90

# EXHIBIT B

Gregg M. Galardi, Esq.  
 Ian S. Fredericks, Esq.  
 SKADDEN, ARPS, SLATE, MEAGHER  
 & FLOM, LLP  
 One Rodney Square  
 PO Box 636  
 Wilmington, Delaware 19899-  
 0636  
 (302) 651-3000

Dion W. Hayes (VSB No. 34304)  
 Douglas M. Foley (VSB No. 34364)  
 MCGUIREWOODS LLP  
 One James Center  
 901 E. Cary Street  
 Richmond, Virginia 23219  
 (804) 775-1000

- and -

Chris L. Dickerson, Esq.  
 SKADDEN, ARPS, SLATE, MEAGHER  
 & FLOM, LLP  
 333 West Wacker Drive  
 Chicago, Illinois 60606  
 (312) 407-0700

Counsel to the Debtors and  
 Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION

- - - - -	X	- - - - -
	:	
In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC.,	:	Case No. 08-35653 (KRH)
<u>et al.</u> ,	:	
	:	
Debtors.	:	Jointly Administered
- - - - -	X	- - - - -
	X	
ASHLEY ISAAC,	:	Contested Matter No. ____
Movant,	:	
	:	
v.	:	
	:	
CIRCUIT CITY STORES, INC.,	:	
	:	
Respondent.	:	
- - - - -	X	- - - - -

**DEBTORS' RESPONSE AND OBJECTION TO ASHLEY ISAAC'S  
AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY**

The debtors and debtors in possession in the above-captioned jointly administered cases (collectively, the "Debtors")<sup>1</sup> hereby respond (the "Response") to the Amended Motion for Relief from Automatic Stay Under Section 362 of the Bankruptcy Code and Memorandum of Points in Support of Plaintiff's Motion (the "Motion") filed by Ashley Isaac (the "Movant"). In support of the Response, the Debtors respectfully represent as follows:

**BANKRUPTCY BACKGROUND**

1. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patap-sco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address is 9950 Mayland3 Drive, Richmond, Virginia 23233.

2. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

3. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

4. On November 12, 2008, the Court appointed Kurtzman Carson Consultants LLC ("KCC") as claims, noticing and balloting agent for the Debtors in these chapter 11 cases pursuant to 28 U.S.C. § 156(c).

5. On December 10, 2008, the Court entered that certain Order Pursuant to Bankruptcy Code Sections 105 and 502 and Bankruptcy Rules 2002, 3003(c)(3), and 9007 (I) Setting General Bar Date and Procedures for Filing Proofs of Claim; and (II) Approving Form and Manner of Notice Thereof (Docket No. 890) (the "Claims Bar Date Order").

6. Pursuant to the Claims Bar Date Order, the deadline for filing all "claims" (as defined in 11 U.S.C. § 105(5)) arising before November 10, 2008 against the Debtors by any non-governmental entity was 5:00 p.m. (Pacific) on January 30, 2009 (the "General Bar Date"). The deadline for

governmental units to file claims that arose before November 10, 2009 was 5:00 p.m. (Pacific) on May 11, 2009 (the "Governmental Bar Date"). Pursuant to the Claims Bar Date Order, this Court approved the form and manner of the claims bar date notice, which was attached as Exhibit A to the Claims Bar Date Order (the "Claims Bar Date Notice").

7. On December 17 and 19, 2008, KCC served a copy of the Claims Bar Date Notice on the Movant because of her status as an employee, all parties who filed notices of appearance pursuant to Bankruptcy Rule 2002, all of the Debtors' scheduled creditors in these cases, the Debtors' equity holders, and certain other parties (Docket No. 1314). In addition, the Debtors published the Claims Bar Date Notice in The Wall Street Journal (Docket No. 1395) and The Richmond Times-Dispatch (Docket No. 1394).

8. On January 16, 2009, the Court authorized the Debtors, among other things, to conduct going-out-of-business sales at the Debtors' remaining 567 stores pursuant to an agency agreement (the "Agency Agreement") between the Debtors and a joint venture, as agent (the "Agent"). On January 17, 2009, the Agent commenced going out of business sales pursuant to the Agency Agreement at the Debtors' remaining stores. As of March 8, 2009, the going out of

business sales at the Debtors' remaining stores had been completed (the "Liquidation").

9. On May 13, 2009, and in violation of the automatic stay, Movant filed a complaint (the "Complaint") against, among others, the Debtors in the United States District Court for the Northern District of Alabama, Northern Division (the "District Court Litigation"). A copy of the Complaint is attached hereto as Exhibit A. The Debtor was never served with the Complaint.

10. On July 20, 2009, the United States District Court for the Northern District of Alabama *sua sponte* dismissed the District Court Litigation as against the Debtors on account of the Debtors' bankruptcy proceedings (the "District Court Dismissal Order"). A copy of the District Court Dismissal Order is attached hereto as Exhibit B.

11. The Movant mailed the Debtors a Subpoena *Duces Tecum* dated July 23, 2009, allegedly seeking third party discovery relating to the District Court Litigation (the "Discovery"). A copy of the Discovery is attached hereto as Exhibit C. On August 12, 2009, the Debtors objected and responded to the Discovery (the "Debtors'



Objection"). A copy of the Debtors' Objection is attached hereto as Exhibit D.

12. On July 28, 2009, the Movant filed a **late** proof of claim asserting a general unsecured claim in the amount of \$850,000.00 against the Debtors ("Claim No. 14526"). A copy of Claim No. 14526 is attached hereto as Exhibit E.

13. On August 12, 2009, Movant filed this Motion.

14. On August 14, 2009, the District Court dismissed the District Court Litigation against the remaining defendant. A copy of the District Court's order dismissing the District Court Litigation is attached hereto as Exhibit F.

**PRELIMINARY STATEMENT**

15. The Movant has not, and cannot meet her burdens with respect to the Motion. The Movant has failed to meet her statutory burdens under section 362 of the Bankruptcy Code to establish "cause" to lift or modify the automatic stay. In the Motion for Relief, the Movant seeks lifting of the automatic stay to allow the Movant to "pursue a Federal court action pending in the Federal Court of the State of Alabama, Jefferson County." Motion, p. 1. The sole argument in support of her Motion is "[i]n order for

Movant's claim to be liquidated, the pending lawsuit must be resolved." Motion, ¶ 12. This argument, even if established, does not entitle the Movant to relief from the automatic stay. Furthermore, the District Court Litigation has now been dismissed. Accordingly, there is no pending litigation to continue.

16. The Movant was served with the Bar Date Notice based on her status as an employee. In lieu of filing a proof of claim, Movant initiated the District Court Litigation - an act that was void *ab initio* because it was filed in violation of the automatic stay. She was provided actual notice of the Bar Date based upon her status as an employee and ignored it. As such, she is not a creditor of the Debtors. For that reason alone, as well as the other arguments set forth below, she cannot establish "cause" for liquidating her alleged claim in the District Court Litigation and has failed to establish or address any basis on why she is entitled to any claim against the Debtors' estates.

**OBJECTION TO THE MOTION FOR RELIEF FROM STAY**

17. The Debtors respectfully object to the Movant's Motion. The Movant requests that she be permitted relief from the automatic stay to continue the District

Court Litigation against the Debtors. As set forth above, however, the District Court Litigation has now been dismissed against all defendants.

18. The automatic stay provided for in section 362 of the Bankruptcy Code operates as a stay against:

[T]he commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title. . . .

11 U.S.C. § 362. "The automatic stay is the most fundamental protection afforded a debtor in bankruptcy," In re Nelco, B.R. 790, 810 (Bankr. E.D. Va. 1999), and Congress intended the automatic stay protection to have broad application. See H.R. Rep. No. 95-595. 95th Cong., a340-42(1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6296-97; S. Rep. No. 95-989, at 49-51 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5840-41. "The main purpose of the automatic stay is to give the debtor a breathing spell from his creditors, to stop all collection efforts, harassment and foreclosure actions." In re Atlas Machine & Iron Works, 239 B.R. 322, 328 (Bankr. E.D. Va. 1998) (citation omitted); see also In re A.H. Robins Co., 788 F.2d 994, 998 (4th Cir. 1985) (stating that a key purpose of section 362 is "to

provide the debtor and its executives with a reasonable respite from the protracted litigation, during which they may have an opportunity to formulate a plan of reorganization for the debtor"); In re Avis, 178 F.3d 718, 720-721 (4th Cir. 1999).

19. Pursuant to section 362(d)(1), an unsecured creditor is entitled to relief from the automatic stay only if it is able to show that cause exists for such relief. See In re Tristar Auto Group, Inc., 141 B.R. 41, 44 (Bankr. S.D.N.Y. 1992) (an unsecured creditor must "establish extraordinary circumstances" for the court to lift the stay). The only express statutory definition of "cause" includes "the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). Other circumstances constituting "cause" are determined by the courts on a "case-by-case" basis. See In re Robbins, 964 F.2d 342, 345 (4th Cir. 1992). The moving party carries the burden of making an "initial showing of 'cause' for relief from the stay." In re Mazzeo, 167 F.3d 139, 142 (2d Cir. 1999) (citations omitted).

20. To determine whether "cause" exists to lift or modify the automatic stay, the Fourth Circuit has established that a bankruptcy court "must balance potential

prejudice to the bankruptcy debtor's estate against the hardships that will be incurred by the person seeking relief from the automatic stay if relief is denied." Robbins, 964 F.2d at 345 (citing In re Peterson, 116B.R. 247, 249 (D.Colo. 1990)); see also In re Robinson, 169 B.R. 356 (E.D. Va. 1994) (the court must attempt to "harmonize the interest of both debtor and creditors while preserving the debtors assets for repayment and reorganization...").<sup>2</sup>

21. As demonstrated below, applying this balancing test, the Movant cannot establish a prima facie showing that sufficient cause exists to allow relief from the automatic stay as she has not alleged that the stay will impose a serious burden upon her. However, even if the Court finds that the Movant has leapt the prima facie hurdle, the facts underlying the Motion demonstrate that the Debtors are entitled to continued protection from the automatic stay.

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<sup>2</sup> In making this determination, some of the factors the court should consider are: "1) whether the issues in the litigation involve only state law; 2) whether modifying the stay will promote judicial economy; 3) whether the bankruptcy court will be disrupted if the stay is not lifted; and 4) whether the estate can be protected if the estate is lifted." Robinson, 169 B.R. at 359 (citing Robbins, 964 F.2d at 344).

**A. Permitting the District Court Litigation to Proceed or Recommence Would Cause Prejudice to the Debtors and the Estates**

22. The "key to determining whether to permit an action to proceed in another tribunal" is whether that case will cause "interference with the pending bankruptcy case." In re Penn-Dixie Indus., 6 B.R. 832, 835 (Bankr. S.D.N.Y. 1980). Even participation in preliminary proceedings can be disruptive, as the Penn-Dixie court explained:

Interference by creditors in the administration of the estate, no matter how small, through the continuance of a preliminary skirmish in a suit outside the Bankruptcy Court is prohibited. In short, the Debtor should not be required to devote energy to this collateral matter at this juncture. . . . This Court will not allow Plaintiffs to chip away piecemeal at the Debtor's automatic stay protection.

Id. at 836-37 (refusing to lift stay for the limited purpose of requiring the debtor to produce customer list in class certification proceeding); see In re Towner Petro. Co., 48 B.R. 183, 191 (Bankr. W.D. Okla, 1985) (refusing to lift stay because discovery would require the debtor to expend sufficient time and effort away from the debtor's attempts at reorganization so as to prejudice the reorganization efforts); In re Curtis, 40 B.R. 795, 806 (Bankr. D. Utah 1984) ("Even slight interference with the administration may

be enough to preclude relief in the absence of a commensurate benefit."); see also In re Collins, 118 B.R. 35, 38 (Bankr. D. Md. 1990).

23. The Debtors and their estates would be prejudiced if the automatic stay were modified to permit the District Court Litigation to recommence because litigating the District Court Litigation would expose them to significant financial commitments and litigation costs in addition to the potential liability in the District Court Litigation.

24. Accordingly, the Debtors will suffer significant prejudice if the Motion were granted because of the distraction and interference to the Debtors' efforts that would flow from allowing the District Court Litigation to proceed. See In re United States Brass Corp., 173 B.R. 1000, 1006 (Bankr. E.D. Tex 1994) ("When balancing the hardships in lifting the stay, the most important factor is the effect of such litigation on the administration of the estate; even slight interference with the administration may be enough to preclude relief.") (citing In re Curtis, 40 B.R. 795, 806 (Bankr. D. Utah 1984)).

**B. The Movant Would Suffer Little, If Any, Hardship If The Automatic Stay Is Retained**

25. While the Debtors would suffer significant prejudice in moving forward with the District Court Litigation at this time, the Movant has not shown that she would be prejudiced if the Motion is denied.

26. Assuming *arguendo* that the Movant's claim were timely, or she moves to deem it timely filed, a position the Debtors would oppose, the Movant would only face the ordinary delay that all creditors face in complex chapter 11 cases. Creditor delay is inherent in the bankruptcy process, and is an unavoidable - and intended - consequence of the automatic stay. See In re Comdisco, Inc., 271 B.R. 273, 279 (Bankr. N.D.III. 2002) ("The automatic stay almost always delays litigants. That, after all, is its purpose, and the reason they call it a 'stay.'").

**CONCLUSION**

WHEREFORE, for the foregoing reasons the Debtors respectfully request that the Court deny the Motion and grant the Debtors such other and further relief as this Court deems just and proper.



Dated: August 20, 2009 SKADDEN, ARPS, SLATE, MEAGHER &  
Richmond, Virginia FLOM, LLP  
Gregg M. Galardi, Esq.  
Ian S. Fredericks, Esq.  
P.O. Box 636  
Wilmington, Delaware 19899-0636  
(302) 651-3000

- and -

SKADDEN, ARPS, SLATE, MEAGHER &  
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Chris L. Dickerson, Esq.  
333 West Wacker Drive  
Chicago, Illinois 60606  
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- and -

MCGUIREWOODS LLP

/s/ Douglas M. Foley  
Dion W. Hayes (VSB No. 34304)  
Douglas M. Foley (VSB No. 34364)  
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901 E. Cary Street  
Richmond, Virginia 23219  
(804) 775-1000

Counsel for Debtors and Debtors  
in Possession

19786931.1